

SENATE TAX, BUSINESS AND TRANSPORTATION
COMMITTEE SUBSTITUTE FOR
SENATE BILL 372

55TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2021

AN ACT

RELATING TO REGIONAL TRANSIT DISTRICTS; PROVIDING THAT REVENUE FROM A REGIONAL TRANSIT GROSS RECEIPTS TAX IMPOSED BY A COUNTY BE DISTRIBUTED DIRECTLY TO THE DISTRICT RATHER THAN TRANSFERRED FROM THE COUNTY TO THE DISTRICT.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

SECTION 1. A new section of the Tax Administration Act is enacted to read:

"~~[NEW MATERIAL]~~ DISTRIBUTION--REGIONAL TRANSIT DISTRICT.--

A distribution pursuant to Section 7-1-6.1 NMSA 1978 shall be made to each regional transit district created pursuant to the Regional Transit District Act in a county for which the department is collecting a regional transit gross receipts tax imposed by that county in an amount, subject to any increase or decrease made pursuant to Section 7-1-6.15 NMSA 1978, equal to .219943.3

underscoring material = new
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1 the net receipts attributable to the county regional transit
2 gross receipts tax by that county, less any deduction for
3 administrative cost pursuant to Section 7-1-6.41 NMSA 1978."

4 SECTION 2. Section 7-1-6.13 NMSA 1978 (being Laws 1983,
5 Chapter 211, Section 18, as amended) is amended to read:

6 "7-1-6.13. TRANSFER--REVENUES FROM COUNTY LOCAL OPTION
7 GROSS RECEIPTS AND COMPENSATING TAXES.--

8 A. Except as provided in Subsection B of this
9 section and Section 1 of this 2021 act, a transfer pursuant to
10 Section 7-1-6.1 NMSA 1978 shall be made to each county for
11 which the department is collecting a local option gross
12 receipts tax and county compensating tax imposed by that county
13 in an amount, subject to any increase or decrease made pursuant
14 to Section 7-1-6.15 NMSA 1978, equal to the net receipts
15 attributable to the local option gross receipts tax and county
16 compensating tax imposed by that county, less any deduction for
17 administrative cost determined and made by the department
18 pursuant to the provisions of the act authorizing imposition by
19 that county of the local option gross receipts tax and county
20 compensating tax and any additional administrative fee withheld
21 pursuant to Section 7-1-6.41 NMSA 1978.

22 B. A transfer pursuant to this section may be
23 adjusted for a distribution made to a tax increment development
24 district with respect to a portion of a gross receipts tax
25 increment dedicated by a county pursuant to the Tax Increment

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1 for Development Act."

2 SECTION 3. Section 7-1-6.15 NMSA 1978 (being Laws 1983,
3 Chapter 211, Section 20, as amended by Laws 2015, Chapter 89,
4 Section 1 and by Laws 2015, Chapter 100, Section 1) is amended
5 to read:

6 "7-1-6.15. ADJUSTMENTS OF DISTRIBUTIONS OR TRANSFERS TO
7 MUNICIPALITIES, ~~[OR]~~ COUNTIES OR REGIONAL TRANSIT DISTRICTS.--

8 A. The provisions of this section apply to:

9 (1) any distribution to a municipality
10 pursuant to Section 7-1-6.4, 7-1-6.36 or 7-1-6.46 NMSA 1978;

11 (2) any transfer to a municipality with
12 respect to any local option gross receipts tax imposed by that
13 municipality;

14 (3) any transfer to a county with respect to
15 any local option gross receipts tax imposed by that county;

16 (4) any distribution to a county pursuant to
17 Section 7-1-6.16 or 7-1-6.47 NMSA 1978;

18 (5) any distribution to a municipality or a
19 county of gasoline taxes pursuant to Section 7-1-6.9 NMSA 1978;

20 (6) any transfer to a county with respect to
21 any tax imposed in accordance with the Local Liquor Excise Tax
22 Act;

23 (7) any distribution to a county from the
24 county government road fund pursuant to Section 7-1-6.26 NMSA
25 1978;

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1 (8) any distribution to a municipality of
2 gasoline taxes pursuant to Section 7-1-6.27 NMSA 1978; ~~and~~

3 (9) any distribution to a municipality of
4 compensating taxes pursuant to Section 7-1-6.55 NMSA 1978; and

5 (10) any distribution to a regional transit
6 district pursuant to Section 1 of this 2021 act.

7 B. Before making a distribution or transfer
8 specified in Subsection A of this section to a municipality,
9 ~~[or]~~ county or regional transit district for the month, amounts
10 comprising the net receipts shall be segregated into two
11 mutually exclusive categories. One category shall be for
12 amounts relating to the current month, and the other category
13 shall be for amounts relating to prior periods. The total of
14 each category for a municipality, ~~[or]~~ county or regional
15 transit district shall be reported each month to that
16 municipality, ~~[or]~~ county or regional transit district. If the
17 total of the amounts relating to prior periods is less than
18 zero and its absolute value exceeds the greater of one hundred
19 dollars (\$100) or an amount equal to twenty percent of the
20 average distribution or transfer amount for that municipality,
21 ~~[or]~~ county or regional transit district, then the following
22 procedures shall be carried out:

23 (1) all negative amounts relating to any
24 period prior to the three calendar years preceding the year of
25 the current month, net of any positive amounts in that same

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1 time period for the same taxpayers to which the negative
 2 amounts pertain, shall be excluded from the total relating to
 3 prior periods. Except as provided in Paragraph (2) of this
 4 subsection, the net receipts to be distributed or transferred
 5 to the municipality, [~~or~~] county or regional transit district
 6 shall be adjusted to equal the amount for the current month
 7 plus the revised total for prior periods; and

8 (2) if the revised total for prior periods
 9 determined pursuant to Paragraph (1) of this subsection is
 10 negative and its absolute value exceeds the greater of one
 11 hundred dollars (\$100) or an amount equal to twenty percent of
 12 the average distribution or transfer amount for that
 13 municipality, [~~or~~] county or regional transit district, the
 14 revised total for prior periods shall be excluded from the
 15 distribution or transfers and the net receipts to be
 16 distributed or transferred to the municipality, [~~or~~] county or
 17 regional transit district shall be equal to the amount for the
 18 current month.

19 C. The department shall recover from a
 20 municipality, [~~or~~] county or regional transit district the
 21 amount excluded by Paragraph (2) of Subsection B of this
 22 section. This amount may be referred to as the "recoverable
 23 amount".

24 D. Prior to or concurrently with the distribution
 25 or transfer to the municipality, [~~or~~] county or regional

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1 transit district of the adjusted net receipts, the department
2 shall notify the municipality, [~~or~~] county or regional transit
3 district whose distribution or transfer has been adjusted
4 pursuant to Paragraph (2) of Subsection B of this section:

5 (1) that the department has made such an
6 adjustment, that the department has determined that a specified
7 amount is recoverable from the municipality, [~~or~~] county or
8 regional transit district and that the department intends to
9 recover that amount from future distributions or transfers to
10 the municipality, [~~or~~] county or regional transit district;

11 (2) that the municipality, [~~or~~] county or
12 regional transit district has ninety days from the date notice
13 is made to enter into a mutually agreeable repayment agreement
14 with the department;

15 (3) that if the municipality, [~~or~~] county or
16 regional transit district takes no action within the ninety-day
17 period, the department will recover the amount from the next
18 six distributions or transfers following the expiration of the
19 ninety days; and

20 (4) that the municipality or county may
21 inspect pursuant to Section 7-1-8.9 NMSA 1978, and that the
22 regional transit district may inspect pursuant to Section
23 7-1-8.11 NMSA 1978, an application for a claim for refund that
24 gave rise to the recoverable amount, exclusive of any amended
25 returns that may be attached to the application.

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1 E. No earlier than ninety days from the date notice
2 pursuant to Subsection D of this section is given, the
3 department shall begin recovering the recoverable amount from a
4 municipality, ~~[or]~~ county or regional transit district as
5 follows:

6 (1) the department may collect the recoverable
7 amount by:

8 (a) decreasing distributions or
9 transfers to the municipality, ~~[or]~~ county or regional transit
10 district in accordance with a repayment agreement entered into
11 with the municipality, ~~[or]~~ county or regional transit
12 district; or

13 (b) except as provided in Paragraphs (2)
14 and (3) of this subsection, if the municipality, ~~[or]~~ county or
15 regional transit district fails to act within the ninety days,
16 decreasing the amount of the next six distributions or
17 transfers to the municipality, ~~[or]~~ county or regional transit
18 district following expiration of the ninety-day period in
19 increments as nearly equal as practicable and sufficient to
20 recover the amount;

21 (2) if, pursuant to Subsection B of this
22 section, the secretary determines that the recoverable amount
23 is more than fifty percent of the average distribution or
24 transfer of net receipts for that municipality, ~~[or]~~ county or
25 regional transit district, the secretary:

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1 (a) shall recover only up to fifty
2 percent of the average distribution or transfer of net receipts
3 for that municipality, [Ø] county or regional transit
4 district; and

5 (b) may, in the secretary's discretion,
6 waive recovery of any portion of the recoverable amount,
7 subject to approval by the state board of finance; and

8 (3) if, after application of a refund claim,
9 audit adjustment, correction of a mistake by the department or
10 other adjustment of a prior period, but prior to any recovery
11 of the department pursuant to this section, the total net
12 receipts of a municipality, [Ø] county or regional transit
13 district for the twelve-month period beginning with the current
14 month are reduced or are projected to be reduced to less than
15 fifty percent of the average distribution or transfer of net
16 receipts, the secretary may waive recovery of any portion of
17 the recoverable amount, subject to approval by the state board
18 of finance.

19 F. No later than ninety days from the date notice
20 pursuant to Subsection D of this section is given, the
21 department shall provide the municipality, [Ø] county or
22 regional transit district adequate opportunity to review an
23 application for a claim for refund that gave rise to the
24 recoverable amount, exclusive of any amended returns that may
25 be attached to the application, pursuant to Section 7-1-8.9

1 NMSA 1978.

2 G. On or before September 1 of each year [~~beginning~~
3 ~~in 2016~~], the secretary shall report to the state board of
4 finance and the legislative finance committee the total
5 recoverable amount waived pursuant to Subparagraph (b) of
6 Paragraph (2) and Paragraph (3) of Subsection E of this section
7 for each municipality, [~~and~~] county and regional transit
8 district in the prior fiscal year.

9 H. The secretary is authorized to decrease a
10 distribution or transfer to a municipality, [~~or~~] county or
11 regional transit district upon being directed to do so by the
12 secretary of finance and administration pursuant to the State
13 Aid Intercept Act or to redirect a distribution or transfer to
14 the New Mexico finance authority pursuant to an ordinance or a
15 resolution passed by the county, [~~or~~] municipality or regional
16 transit district and a written agreement of the municipality,
17 [~~or~~] county or regional transit district and the New Mexico
18 finance authority. Upon direction to decrease a distribution
19 or transfer or notice to redirect a distribution or transfer to
20 a municipality, [~~or~~] county or regional transit district, the
21 secretary shall decrease or redirect the next designated
22 distribution or transfer, and succeeding distributions or
23 transfers as necessary, by the amount of the state
24 distributions intercept authorized by the secretary of finance
25 and administration pursuant to the State Aid Intercept Act or

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1 by the amount of the state distribution intercept authorized
2 pursuant to an ordinance or a resolution passed by the county,
3 [~~or~~] municipality or regional transit district and a written
4 agreement with the New Mexico finance authority. The secretary
5 shall transfer the state distributions intercept amount to the
6 municipal or county treasurer or other person designated by the
7 secretary of finance and administration or to the New Mexico
8 finance authority pursuant to written agreement to pay the debt
9 service to avoid default on qualified local revenue bonds or
10 meet other local revenue bond, loan or other debt obligations
11 of the municipality, [~~or~~] county or regional transit district
12 to the New Mexico finance authority. A decrease to or
13 redirection of a distribution or transfer pursuant to this
14 subsection that arose:

15 (1) prior to an adjustment of a distribution
16 or transfer of net receipts creating a recoverable amount owed
17 to the department takes precedence over any collection of any
18 recoverable amount pursuant to Paragraph (2) of Subsection B of
19 this section, which may be made only from the net amount of the
20 distribution or transfer remaining after application of the
21 decrease or redirection pursuant to this subsection; and

22 (2) after an adjustment of a distribution or
23 transfer of net receipts creating a recoverable amount owed to
24 the department shall be subordinate to any collection of any
25 recoverable amount pursuant to Paragraph (2) of Subsection B of

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1 this section.

2 I. Upon the direction of the secretary of finance
3 and administration pursuant to Section 9-6-5.2 NMSA 1978, the
4 secretary shall temporarily withhold the balance of a
5 distribution to a municipality, ~~[or]~~ county or regional transit
6 district, net of any decrease or redirected amount pursuant to
7 Subsection H of this section and any recoverable amount
8 pursuant to Paragraph (2) of Subsection B of this section, that
9 has failed to submit an audit report required by the Audit Act
10 or a financial report required by Subsection F of Section 6-6-2
11 NMSA 1978. The amount to be withheld, the source of the
12 withheld distribution and the number of months that the
13 distribution is to be withheld shall be as directed by the
14 secretary of finance and administration. A distribution
15 withheld pursuant to this subsection shall remain in the tax
16 administration suspense fund until distributed to the
17 municipality, ~~[or]~~ county or regional transit district and
18 shall not be distributed to the general fund. An amount
19 withheld pursuant to this subsection shall be distributed to
20 the municipality, ~~[or]~~ county or regional transit district upon
21 direction of the secretary of finance and administration.

22 J. As used in this section:

23 (1) "amounts relating to the current month"
24 means any amounts included in the net receipts of the current
25 month that represent payment of tax due for the current month,

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1 correction of amounts processed in the current month that
2 relate to the current month or that otherwise relate to
3 obligations due for the current month;

4 (2) "amounts relating to prior periods" means
5 any amounts processed during the current month that adjust
6 amounts processed in a period or periods prior to the current
7 month regardless of whether the adjustment is a correction of a
8 department error or due to the filing of amended returns,
9 payment of department-issued assessments, filing or approval of
10 claims for refund, audit adjustments or other cause;

11 (3) "average distribution or transfer amount"
12 means the following amounts; provided that a distribution or
13 transfer that is negative shall not be used in calculating the
14 amounts:

15 (a) the annual average of the total
16 amount distributed or transferred to a municipality, [Ø] ~~county~~
17 or regional transit district in each of the three
18 twelve-month periods preceding the current month;

19 (b) if a distribution or transfer to a
20 municipality, [Ø] ~~county~~ or regional transit district has been
21 made for less than three years, the total amount distributed or
22 transferred in the year preceding the current month; or

23 (c) if a municipality, [Ø] ~~county~~ or
24 regional transit district has not received distributions or
25 transfers of net receipts for twelve or more months, the

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1 monthly average of net receipts distributed or transferred to
 2 the municipality, ~~[or]~~ county or regional transit district
 3 preceding the current month multiplied by twelve;

4 (4) "current month" means the month for which
 5 the distribution or transfer is being prepared; and

6 (5) "repayment agreement" means an agreement
 7 between the department and a municipality, ~~[or]~~ county or
 8 regional transit district under which the municipality, ~~[or]~~
 9 county or regional transit district agrees to allow the
 10 department to recover an amount determined pursuant to
 11 Paragraph (2) of Subsection B of this section by decreasing
 12 distributions or transfers to the municipality, ~~[or]~~ county or
 13 regional transit district for one or more months beginning with
 14 the distribution or transfer to be made with respect to a
 15 designated month. No interest shall be charged."

16 SECTION 4. Section 7-1-6.41 NMSA 1978 (being Laws 1997,
 17 Chapter 125, Section 1) is amended to read:

18 "7-1-6.41. ADMINISTRATIVE FEE IMPOSED [APPROPRIATION].--

19 ~~[A.—The taxation and revenue department is directed~~
 20 ~~to withhold an administrative fee of three percent of the net~~
 21 ~~amount to be distributed under the provisions of:~~

22 ~~(1) Section 7-1-6.32 NMSA 1978;~~

23 ~~(2) Section 66-12-20 NMSA 1978; and~~

24 ~~(3) Section 74-1-13 NMSA 1978.~~

25 ~~B.—The administrative fee to be withheld pursuant~~

.219943.3

1 ~~to Subsection A of this section shall be withheld on~~
2 ~~distributions made on or after July 1, 1997 and shall continue~~
3 ~~until the earlier of December 31, 2006 or the date on which the~~
4 ~~New Mexico finance authority certifies to the taxation and~~
5 ~~revenue department that all obligations for bonds issued~~
6 ~~pursuant to Section 12 of this 1997 act have been fully~~
7 ~~discharged and directs the department to cease distributing~~
8 ~~money to the authority pursuant to this section.~~

9 ~~C. The taxation and revenue department is directed~~
10 ~~to withhold an additional administrative fee at the following~~
11 ~~percentage of the net amount to be distributed pursuant to the~~
12 ~~following provisions of law:~~

13 ~~(1) two percent of the net amount to be~~
14 ~~distributed pursuant to Section 7-1-6.12 NMSA 1978; and~~

15 ~~(2) six-tenths of one percent of the net~~
16 ~~amount to be distributed pursuant to Section 7-1-6.13 NMSA~~
17 ~~1978.~~

18 ~~D. The administrative fee to be withheld under~~
19 ~~Subsection C of this section shall be withheld on distributions~~
20 ~~made on or after July 1, 1997 and shall continue until the~~
21 ~~earlier of July 1, 2000 or the date on which the New Mexico~~
22 ~~finance authority certifies to the taxation and revenue~~
23 ~~department that all obligations for bonds issued pursuant to~~
24 ~~Section 12 of this 1997 act have been fully discharged and~~
25 ~~directs the department to cease distributing money to the~~

1 ~~authority pursuant to this section.~~

2 ~~E.] The [administrative fee to be withheld by the~~
 3 ~~taxation and revenue] department [under Section] may withhold~~
 4 ~~an administration fee of three percent of the net amount~~
 5 ~~transferred pursuant to Sections 7-1-6.12 and 7-1-6.13 NMSA~~
 6 ~~1978 [shall be set at three percent of the net amount to be~~
 7 ~~distributed pursuant to the provisions of those sections.~~

8 ~~F. The administrative fee to be withheld under~~
 9 ~~Subsection E of this section shall be withheld on distributions~~
 10 ~~made on or after July 1, 2000 and shall continue until the~~
 11 ~~earlier of December 31, 2006 or the date on which the New~~
 12 ~~Mexico finance authority certifies to the taxation and revenue~~
 13 ~~department that all obligations for bonds issued pursuant to~~
 14 ~~Section 12 of this 1997 act have been fully discharged and~~
 15 ~~directs the department to cease distributing money to the~~
 16 ~~authority pursuant to this section. After the department has~~
 17 ~~been directed by the authority to cease distributing money to~~
 18 ~~the authority pursuant to this section] and the net amount~~
 19 ~~distributed pursuant to Section 1 of this 2021 act. The~~
 20 ~~administrative fee shall be remitted to the state treasurer for~~
 21 ~~deposit in the state general fund each month.~~

22 ~~[G. The administrative fee shall be distributed~~
 23 ~~monthly to the New Mexico finance authority to be pledged~~
 24 ~~irrevocably for the payment of principal, interest and any~~
 25 ~~expenses or obligations related to the bonds issued by the~~

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1 ~~authority to finance the taxation and revenue information~~
2 ~~management systems project.]"~~

3 SECTION 5. Section 7-1-8.11 NMSA 1978 (being Laws 2017,
4 Chapter 63, Section 20) is amended to read:

5 "7-1-8.11. INFORMATION THAT MAY BE REVEALED TO [~~A WATER~~
6 ~~AND SANITATION DISTRICT~~] CERTAIN SPECIAL DISTRICTS.--

7 A. An employee of the department may reveal to the
8 officials and employees of a [~~water and sanitation~~] special
9 district of this state [~~that has in effect a water and~~
10 ~~sanitation gross receipts tax imposed by the water and~~
11 ~~sanitation district upon its~~] authorized by written request for
12 a period specified by [~~that water and sanitation~~] the special
13 district within the twelve months preceding the request for the
14 information by those officials and employees:

15 (1) the names, taxpayer identification numbers
16 and addresses of registered gross receipts taxpayers reporting
17 gross receipts for that [~~water and sanitation~~] special
18 district; the department may also release the information
19 described in this paragraph quarterly or upon any other
20 periodic basis to which the secretary and the special district
21 agree; and

22 (2) information indicating whether the persons
23 shown on a list of businesses within the [~~water and sanitation~~]
24 special district have reported gross receipts to the department
25 but have not reported gross receipts for that [~~water and~~

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1 ~~sanitation]~~ special district.

2 B. The officials and employees of ~~[water and~~
3 ~~sanitation]~~ special districts receiving information as provided
4 in this section shall be subject to the confidentiality
5 provisions of Section 7-1-8 NMSA 1978 and the penalty
6 provisions of Section 7-1-76 NMSA 1978.

7 C. As used in this section:

8 (1) "special district" means a water and
9 sanitation district or a regional transit district located in a
10 county that has imposed and has in effect a special district
11 gross receipts tax in the special district; and

12 (2) "special district gross receipts tax"
13 means:

14 (a) in the case of a regional transit
15 district, the county regional transit gross receipts tax; and

16 (b) in the case of a water and
17 sanitation district, the water and sanitation gross receipts
18 tax."

19 SECTION 6. Section 7-20E-23 NMSA 1978 (being Laws 2004,
20 Chapter 17, Section 2, as amended) is amended to read:

21 "7-20E-23. COUNTY REGIONAL TRANSIT GROSS RECEIPTS TAX--
22 AUTHORITY TO IMPOSE--RATE--ELECTION REQUIRED.--

23 A. Upon a request by resolution of the board of
24 directors of a regional transit district, a majority of the
25 members of the governing body of each county that is within the

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1 district shall impose by identical ordinances an excise tax at
2 the rate specified in the resolution, but not to exceed one-
3 half percent of the gross receipts of any person engaging in
4 business in the district for the privilege of engaging in
5 business. A tax imposed pursuant to this section may be
6 imposed by one or more ordinances, each imposing any number of
7 tax rate increments, but an increment shall not be less than
8 one-sixteenth percent of the gross receipts of any person
9 engaging in business in the district and the aggregate of all
10 rates shall not exceed one-half percent of the gross receipts
11 of any person engaging in business in the district. The tax
12 may be referred to as the "county regional transit gross
13 receipts tax".

14 B. Each governing body, at the time of enacting an
15 ordinance imposing the tax authorized in Subsection A of this
16 section, shall dedicate the revenue for the purposes authorized
17 by the Regional Transit District Act.

18 C. An ordinance imposing a county regional transit
19 gross receipts tax shall not go into effect until after a joint
20 election is held by all counties within the district and a
21 majority of the voters of the district voting in the election
22 votes in favor of imposing the tax. Each governing body shall
23 adopt an ordinance calling for a joint election within seventy-
24 five days of the date the resolution is adopted on the question
25 of imposing the tax. The question shall be submitted to the

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1 voters of the district as a separate question at a general
 2 election or at a joint special election called for that purpose
 3 by each governing body. A joint special election shall be
 4 called, conducted and canvassed substantially in the same
 5 manner as provided by law for general elections. If a majority
 6 of the voters in the district voting on the question approves
 7 the ordinance imposing the county regional transit gross
 8 receipts tax, the ordinance shall become effective in
 9 accordance with the provisions of the County Local Option Gross
 10 Receipts Taxes Act. If the question of imposing the county
 11 regional transit gross receipts tax fails, the governing bodies
 12 shall not again propose the imposition of any increment of the
 13 tax for a period of one year from the date of the election.

14 D. The governing body of a county imposing a county
 15 regional transit gross receipts tax shall, prior to January 1,
 16 2022, transfer all proceeds the county receives from the tax
 17 pursuant to Section 7-1-6.13 NMSA 1978 to the regional transit
 18 district for the purposes specified in the ordinance and in
 19 accordance with the provisions of the Regional Transit District
 20 Act. On and after January 1, 2022, all revenue from the tax
 21 shall be distributed pursuant to Section 1 of this 2021 act.

22 E. As used in this section, "county within the
 23 district" means a county within which lies any portion of a
 24 regional transit district."

25 SECTION 7. EFFECTIVE DATE.--The effective date of the

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1 provisions of this act is January 1, 2022.

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